

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:  <b>PATRICK BAKER dba STOCKTON AUTO</b>  Muscatine County, Iowa	ADMINISTRATIVE CONSENT ORDER  NO. 2013-AQ- 09 NO. 2013-SW- 06
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TO: Patrick Baker  
4905 Sturdevant Street  
Davenport, Iowa 52806

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Patrick Baker dba Stockton Auto for the purpose of resolving the air quality and solid waste violations which occurred during the demolition of a building at 208 Commerce Street in Stockton, Iowa. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Mark Heiderscheit, Environmental Specialist  
Iowa Department of Natural Resources  
1023 West Madison  
Washington, Iowa 52353-1623  
Phone: 319/653-2135

**Relating to legal requirements:**

Kelli Book, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Windsor Heights, Iowa 50324  
Phone: 515/281-8563

**Payment of penalty to:**

Iowa Department of Natural Resources  
Henry A. Wallace Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division

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IV, Part 1 (solid waste), and the rules promulgated or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties, DNR has jurisdiction to issue this administrative consent order.

**III. STATEMENT OF FACTS**

1. Harry Riley owns a parcel of property located at 208 Commerce Street in Stockton, Iowa. Patrick Baker is the contract holder of this property and operates his business Stockton Auto from this property. Mr. Baker buys damaged automobiles and repairs them at the property.

2. On September 10, 2012, DNR Field Office 6 received a complaint about the paint fumes from Stockton Auto.

3. On September 26, 2012, Mark Heiderscheit, DNR Field Office 6 environmental specialist, investigated the complaint. Upon arrival at the property, Mr. Heiderscheit observed a large pit on the property that contained demolition waste, tire treads, and other materials. At the time of the inspection, the materials in the pit were being burned. Mr. Heiderscheit also observed a large pile of lumber to the east of the pit. Mr. Baker and Dale Ellsworth, with Ellsworth Excavating Company, arrived on site. Mr. Baker explained that he hired Ellsworth Excavating Company to demolish the building. He explained that the building had been built in the 1890s and was a dance hall at one time. Most of the wood had been removed from the building prior to the demolition and was a shell of a building with a dirt floor at the time of the demolition and burning. Mr. Baker explained that he thought he had done everything properly in that he received permission from the city to demolish and burn the building. Mr. Heiderscheit informed them that burning the demolition waste was a violation and that the fire would need to be extinguished. Mr. Heiderscheit stated that the debris would need to be taken to the landfill as asbestos containing material unless an inspection had been conducted prior to the demolition and burning. Mr. Heiderscheit verified with DNR Field Office 6 that a demolition notification had not been submitted to the DNR. Following the discussion regarding the building, Mr. Heiderscheit spoke to Mr. Baker about the complaint the field office had received regarding the painting at the facility. Mr. Heiderscheit explained the air quality regulations and asked that Mr. Baker work with the Air Quality Bureau to obtain a permit by rule for the painting at the property.

4. On September 27, 2012, Mr. Baker contacted Mr. Heiderscheit and explained that Mr. Ellsworth had contacted an asbestos contractor to sample any suspect material.

5. On October 2, 2012, Mr. Baker contacted Mr. Heiderscheit and stated that the lab results indicated the debris contained no asbestos material and that the material had been properly disposed of. Mr. Baker said the pit had been filled in.

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Mr. Baker indicated that he would send all information regarding the disposal to Mr. Heiderscheit.

6. On October 9, 2012, DNR issued a Notice of Violation letter to Mr. Baker for the open burning, asbestos, and solid waste violations that Mr. Heiderscheit discovered in September. The letter explained that the violations had been referred for further enforcement.

7. On November 8, 2012, Mr. Baker submitted the permit by rule application and information regarding 6H to DNR Air Quality for the painting operation at his facility.

8. In 2006, DNR field office personnel met with Mr. Baker regarding an open burning complaint. The field office personnel explained the open burning regulations to Mr. Baker and provided him a copy of the regulations.

#### **IV. CONCLUSIONS OF LAW**

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. Pursuant to Iowa Code sections 455B.133 and 455B.134, 567 IAC 22.1(1) was established, which requires that a person who constructs, installs, reconstructs or alters equipment or control equipment that is not exempt must first obtain an air quality construction permit from the DNR. During the visit by DNR Field Office 6 it was determined that Mr. Baker was painting on site without a construction permit. The above-stated facts demonstrate noncompliance with these provisions.

3. 567 IAC 22.8(1)(c) allows for facilities with paint booths that spray more than one gallon but never more than three gallons per day to be exempt from all requirements of 567 IAC 22 and obtain a permit by rule. This provision requires that a certification must be submitted to the DNR, daily records must be kept, and the emissions must be vented through a stack that is at least 22 feet tall. The daily records must be kept for a period of 18 months. During the visit by DNR Field Office 6 it was determined that the permit by rule had not been obtained.

4. 40 Code of Federal Regulations Part 63 Subpart HHHHHH (6H)—Emission standards for hazardous air pollutants for area sources: paint stripping and miscellaneous surface coating operations was adopted by reference at 567 IAC 23.1(4)(eh). Mr. Baker's facility is subject to 6H. The compliance date for 6H was January 11, 2011. Mr. Baker did not submit the 6H information to the DNR until October 2012. The above-facts indicate a violation of this provision.

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5. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). Mr. Heiderscheit observed a building on the Stockton Auto property that had been demolished and was being burned in a pit on the property. The above facts demonstrate noncompliance with this provision.

6. Iowa Code section 455B.133 provides for the Commission to establish rules governing the quality of air and emission standards. Pursuant to Iowa Code section 455B.133, 567 IAC 23.1(3) was established, which adopts by reference the federal regulations regarding asbestos removal. The United States Environmental Protection Agency has delegated to the State of Iowa the authority to implement and enforce the demolition and renovation portions of the federal National Emission Standards for Hazardous Air Pollutants (NESHAP), found at 40 CFR part 61, subpart M.

7. 40 CFR section 61.145(a) specifies that the owner or operator of a demolition or renovation activity shall thoroughly inspect a regulated facility for the presence of asbestos prior to the commencement of demolition or renovation. The DNR has no evidence that an asbestos inspection was ever completed prior to the demolition of the building at Stockton Auto. The above facts indicate a violation of this provision.

8. 40 CFR section 61.145(b)(1) requires written notification of demolition to be submitted to the DNR prior to beginning renovation. The specific requirements for this notification are contained in the subsection. The DNR has no evidence that a notification was ever submitted prior to the demolition of the building at Stockton Auto. The above facts indicate a violation of this provision.

9. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-123.

10. 4567 IAC 100.4 prohibits a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. Mr. Heiderscheit noted that some of the demolition debris and other solid waste was burned in a pit rather than being disposed of at a permitted landfill. The above facts demonstrate noncompliance with this provision.

**V. ORDER**

THEREFORE, it is hereby ordered and Mr. Baker agrees to do the following:

1. Mr. Baker shall pay a penalty of \$2,000.00 in accordance with the following payment plan. If any of the payments are not received in

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accordance with the following payment plan, the remaining penalty shall be due immediately.

\$91.00 due March 15, 2013;	\$83.00 due March 15, 2014;
\$83.00 due April 15, 2013;	\$83.00 due April 15, 2014;
\$83.00 due May 15, 2013;	\$83.00 due May 15, 2014;
\$83.00 due June 15, 2013;	\$83.00 due June 15, 2014;
\$83.00 due July 15, 2013;	\$83.00 due July 15, 2014;
\$83.00 due August 15, 2013;	\$83.00 due August 15, 2014;
\$83.00 due September 15, 2013;	\$83.00 due September 15, 2014;
\$83.00 due October 15, 2013;	\$83.00 due October 15, 2014;
\$83.00 due November 15, 2013;	\$83.00 due November 15, 2014;
\$83.00 due December 15, 2013;	\$83.00 due December 15, 2014;
\$83.00 due January 15, 2014;	\$83.00 due January 15, 2015;
\$83.00 due February 15, 2014;	\$83.00 due February 15, 2015.

## VI. PENALTY

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A. Iowa Code section 455B.307 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the solid waste violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a \$2,000.00 penalty. The administrative penalty assessed by this administrative consent order is determined as follows:

Economic Benefit - 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that "where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit." 567 IAC 10.2(1) further states, "reasonable estimates of economic benefit should be made where clear data are not available." Mr. Baker gained an economic benefit in his failure to have the building inspected prior to the demolition. By not inspecting the building prior to the demolition, Mr. Baker avoided an expense of at least \$100.00. Mr. Baker also gained an economic benefit by burning some of the demolition debris rather than disposing of it at a permitting landfill, including landfill fees and transportation costs. It is estimated that Mr. Baker avoided landfill

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expenses of at least \$1,000.00. Additionally, Mr. Baker's failure to obtain the proper air quality construction permit or permit by rule for the paint booth has allowed Mr. Baker to save time and money. He has been able to avoid recordkeeping requirements and other possible permit requirements. Based on the information above and in an effort to retain this case administratively, the DNR is assessing \$1,100.00 for this factor.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. Such open burning may violate ambient air standards. Open burning releases toxins which pollute the air, may pollute groundwater, and pose a risk to human health and the environment. Asbestos is known to cause cancer and is a hazardous air pollutant. Failure to inspect for asbestos and notify prior to demolition has caused possible asbestos fibers to be released into the air through the demolition and burning of the structures. Additionally, an air quality construction permit is required to be obtained prior to construction in order to allow for the prior review of plans and specifications pertaining to a proposed contaminant source. The purpose of this review is to determine if the source will meet all applicable emission limits and operating requirements. This review ensures that the interests of the citizens of Iowa in clean air are protected. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. These violations threaten the integrity of the regulatory program because compliance with the open burning, asbestos, air quality, and solid waste regulations is required of all persons in this state. Based on the above considerations, \$800.00 is assessed for this factor.

Culpability – Mr. Baker has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that his conduct is subject to DNR's rules. Mr. Baker had been made aware of the open burning violations in the past. Based on the above considerations, \$100.00 is assessed for this factor.

## **VII. WAIVER OF APPEAL RIGHTS**


This administrative consent order is entered into knowingly and with the consent of Patrick Baker. For that reason, Patrick Baker waives the rights to appeal this administrative consent order or any part thereof.

## **VIII. NONCOMPLIANCE**

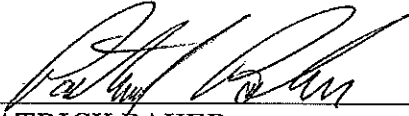
Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this

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administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307.

  
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CHUCK GIPP, DIRECTOR  
Iowa Department of Natural Resources

Dated this 1<sup>st</sup> day of  
March, 2013.

  
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PATRICK BAKER

Dated this 25 day of  
FEBRUARY, 2013.

Kelli Book; Tom Wuehr; DNR Field Office 6; EPA; VI.C, VII.C.1 VII.C.4